IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7719 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LAXMI EDUCATION TRUST

Versus

DIRECTOR SOCIAL WELFARE DEPTT.

Appearance:

MR ANANT S DAVE for Petitioner

Mr. I.M.Pandya, ASSTT. GOVERNMENT PLEADER for Respondent No. 1, 2, 3.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 08/03/2001

ORAL JUDGEMENT

By means of this petition, the petitioner trust has sought for quashing and setting aside the orders 2nd February, 1999 and 20th March, 1999 passed by

the respondent no. 3 Secretary, Social Justice and Empowerment Department and Minister of Social and Welfare Department.

2. The petitioner is a registered public Trust. The petitioner Trust was granted permission and recommendation for running Ashram Shala for the students of SC/ST and socially backward class. The petitioner trust was also running a primary school from standard 1st to 7th and the hostel for the students. The petitioner trust applied on 11.5.98 to the District Collector for allotting 10 acres of land of survey no. 156 of village Karai, Dist: Gandhinagar to the petitioner trust for running an Ashram Shala on the basis of the circular issued by the District Collector. The Deputy Director, Social Welfare Department also recommended to the Collector, Gandhinagar for allotment of the said land by his letters dated 30.6.98 and 27th August, 1998. The premises of the Shala was inspected by the Inspection squad of Directorate of Social Welfare Department. Thereafter, a show cause notice was issued on 11.9.98 to the petitioner by the Director of Social Welfare Department as to why the recognition of the Ashram Shala should not be cancelled and why grant given to the petitioner to run the Ashram Shala should not be reduced from the admissible grant. Pursuant thereto, the petitioner filed a reply on 3.10.98 to the show cause notice giving complete details of the explanation in respect of the alleged irregularities found in the premises of the petitioner trust. Another show cause notice was issued on 21st November, 1998 to the petitioner by the Section Officer, Social Welfare Department asking the petitioner to remain present for personal hearing. The petitioner also submitted the reply on 24.11.98 to the show cause notice dated 21st November, 1998. The petitioner remained present before the Deputy Secretary with all records and produced all relevant papers before him. By the order dated 2nd February, 1999 the Deputy Secretary cancelled the recognition of the Ashram Shala without assigning any reasons regarding the explanation given by the petitioner. The petitioner therefore, made a representation on 3rd Febraury, 1999 to the Minister concerned for continuing the recognition of the Ashram Shala and that representation has also been rejected by the order dated 20.3.99 of the Section Officer of Social Justice and Empowerment Department. Hence, the petitioner has filed the present petition.

3. The contention of the learned counsel for the petitioner is that the petitioenr was never given the

inspection report, nor a copy of the recommendation of the Deputy Director and the Additional Secretary and without considering the reply, its recognition has been cancelled. It is also stated that some additional ground was considered by the Director for recommending the withdrawal of the recognition which was not stated in the show cause notice. A copy of the report given by the Director of Social Welfare Department was not furnished to the petitioner. Hence the petitioner was not able to know as to on what grounds the Director has disbelieved the explanation tendered by the petitioner and on what grounds the Director has recommended the cancellation of the recognition of the Ashram Shala of the petitioner. Non-supply of the report of the Director, Social Welfare Department, amounts to denial of opportunity of hearing, which is violative of principles of natural justice. In the impugned order, the Director has also held that under the Rules, the petitioner is required to have its own building and that was none of the grounds mentioned in the show cause notice and the petitioner was never asked to give an explanation regarding purchase of the land and the construction of the building thereon. The petitioner has already moved the District Collector by a letter dated 11.5.98 for the allotment of 10 acres of land of survey no.156 of village Karai to the petitioner. The Deputy Director, Social Welfare Department has also recommended by his letter dated 30.6.98 to the District Collector for the allotment of such land, but the land has not been allowed and the petitioner was not able to construct its own building on the said land. The matter regarding allotment of land was pending before the District Collector and that has not been considered by the respondent no. 3 while cancelling the recognition of the Ashram Shala. The contention of the learned counsel for the petitioner is that the action of the respondents is illegal, arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India. According to him, had the petitioner been given a reasonable time to make good the irregularities found by the Inspection Squad, within a period of few days, irregularities could have been removed and it would not have remained in existence.

4. On behalf of the respondent State, an affidavit-in-reply has been filed by the Deputy Director stating therein that the inspection of the Ashram Shala run by the petitioner trust was carried out by the officer on 27th August, 1998 and many irregularities were found during the inspection and so a show cause notice was given to the petitioner on 11th September, 1998 pointing out the irregularities which were found on the date of the inspection. The Director, Social Welfare

Department, after considering the allegations made in the notice, inspection report and the explanation given by the petitioner, forwarded the papers to the State Government as to why the recognition given to the petitioner be not cancelled as the power of cancellation was vest with the State Government. It is also stated that the State Government had issued a notice to the petitioner on 21st November, 1998 giving an opportunity of hearing as to why the recognition given to the petitioner be not cancelled on the grounds mentioned in the notice. Pursuant to the said notice issued by the State Government, the Managing trustee of the petitioner trust remained present and made submissions. After considering the irregularities and the explanation given by the petitioner, the Government passed the order cancelling the recognition granted to the petitioner vide order dated 2.2.99. The order passed by the respondent no. 3 cannot be treated as illegal, arbitrary or erroneous. It is also stated that the recognition to start Ashram Shala was given to the petitioner in the year 1988-89. Till the date of order of cancellation, the petitioner could not manage to have the land for the purpose of Ashram Shala. In this respect, the learned counsel for the petitioner submitted that the matter regarding allotment of land alrelady recommended by the Deputy Director, Social Welfare Department was pending before the District Collector. The affidavit in this respect is false.

5. Heard the learned counsel for the petitioner. The contention of the learned counsel for the petitioner is that the copy of the inspection report was not supplied to the petitioner. The copy of the recommendation by the Director of Social Welfare Department recommending the cancellation of the recognition of the petitioner was also not supplied to the petitioner trust. The petitioner was not at all aware as to what were the grounds on which the Director of Social and Welfare Department recommended for cancellation of the recognition of the Ashram Shala and the Director has also considered one additional ground that the petitioner does not own its own constructed building and land as required under Rules. That ground was not shown in the show cause notice and the petitioner was not aware of that ground. Moreover, the matter regarding the land for allotment was pending before the District Collector. The orders were passed without affording a reasonable opportunity to meet with the grounds and the orders passed against the petitioner are in violation of the principles of natural justice. The learned counsel for the petitioner also relied on the

decision of this court dated 29.8.96 in the case of Navbharti Baxipanch vs. State of Gujarat in Special Civil Application no. 9348 of 1995, wherein the order was quashed and set aside and the respondents were directed to give fresh opportunity of hearing to the parties concerned and pass a fresh order after hearing the petitioner Ashram Shala. He also relied on another decision dated 9.11.1996 in the case of Poshina Education Trust vs. Director, Vikasti Jati Kalyan Department in Special Civil Application no. 5426 of 1996 in which it is held that the reports dated 2.12.95 and 1.2.1996 which were considered by the respondents, while considering the impugned order were neither disclosed nor given to the petitioner. Hence, the order was considered in breach of principles of natural justice. Without giving an opportunity to explain adverse material against him, it was considered sufficient to vitiate the order and the impugned order dated 19th March, 1996 passed by the Director of Vikasti Jati Kalyan Department was quashed and an opportunity was given to the respondents to take fresh proceedings in accordance with law. The learned advocate for the petitioner also relied on the decision of this Court dated 10.7.1996 in the case of Raval Yogi Samaj Seva Mandal versus Director, Vikasti Jati Kalayan Department in Special Civil Application no.2551 of 1996 wherein it has been considered that two reports had not been furnished to the petitioner while making the order and it is a well settled principle of law that a person against whom any order adverse to his interest is made, he is informed of the material on the basis of which such adverse order is made. If the authority fails to adhere to this principle, it cannot be said that the decision has been reached by adopting procedure which is just and fair. Hence, the impugned ordre was held to be in breach of principles of natural justice and that was considered tobe sufficient to vitiate the order. Accordingly, the impugned order dated 26th March, 1996 was quashed and the respondents were directed to proceed afresh in accordance with law.

6. The learned AGP could not substantiate that the inspection report was supplied to the petitioner and the report of the Director recommending the cancellation of the recognition of the Ashram Shala of the petitioner trust was supplied at any stage. He could not point out that reasonable opportunity of hearing was given to the petitioner. In the facts and circumstances of the case, the petitioner has not been supplied the copy of the inspection report and the copy of the Director of Social Welfare Department to the petitioner. That amounts to denial of opportunity of hearing to the

petitioner and that is in violation of principles of natural justice. Thus, the order dated 2nd February, 1999 passed by the respondent no.3 and the order dated 20th March, 1999 passed by the Minister are not sustainable in the eye law and they deserve to be set aside.

7. In view of the above, this petition deserves to be allowed and is hereby allowed. The order dated 2nd February, 1999 and the order dated 20th March, 1999 at Annexures "G" and "H" are hereby quashed and set aside. The respondents are at liberty to furnish copies of the inspection report and the recommendation made by the Director of Social Welfare Department to the Government for cancellation of the recognition of the petitioner school and take a fresh decision after giving an opportunity of hearing to the petitioner and in light of the observations made in this judgment. Rule is made accordingly with no order as to costs.

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